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No. 82-432

IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

LOCAL NO. 82, FURNITURE AND PIANO MOVING, FURNITURE STORE DRIVERS, HELPERS, WAREHOUSEMEN, AND PACKERS; BART GRIFFITHS, SECRETARY-TREASURER, LOCAL NO. 82, *et al.*,

Petitioners,

v.

JEROME CROWLEY, *et al.*,

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the First Circuit

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BRIEF FOR AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS AS *AMICUS CURIAE* IN SUPPORT OF PETITIONERS

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BRIEF FOR AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS AS *AMICUS CURIAE* IN SUPPORT OF PETITIONERS

The American Federation of Labor and Congress of Industrial Organizations ("AFL-CIO"), a federation of 99 national and international unions with a total membership of approximately 14 million working men and women, submits this brief *amicus curiae* with the consent of the parties pursuant to this Court's rules.

SUMMARY OF ARGUMENT

The court below affirmed an injunction the effect of which was "to set aside the earlier nomination and election" that the petitioner union had held and to "order a new election and the procedures therefor." 679 F.2d at 983-84. We demonstrate herein that the injunction was improperly entered for two independent reasons.

I. Congress in enacting Title IV of the Labor-Management Reporting and Disclosure Act of 1959 ("LMRDA"), 29 U.S.C. § 481, *et seq.*, intended to preclude private suits to set aside union elections. Title IV establishes a procedure whereby the Secretary of Labor—and only the Secretary—may sue to overturn a union election. And § 403 of Title IV states: "The remedy provided by this [title] for challenging an election already conducted shall be exclusive."

The language of § 403 suggests that when an election has proceeded to the point that the relief being sought from a court is an order "set[ting] aside" the election and direct[ing] a "new election," that suit is precluded as one brought to "challeng[e] an election already conducted." This conclusion is confirmed by an examination of the legislative history and the "objectives Congress sought to achieve" (p. 7, *infra*) in enacting § 403. The purpose of that section is to insure that the procedures Congress deemed appropriate for actions seeking to set aside union elections cannot be circumvented through private lawsuits. The court below thus erred in reading § 403 to preclude private suits to set aside elections only *after* "all the ballots are counted"; Congress' concern in § 403 was with the *substance of the relief* being sought and not with the suits' *timing*. Part I(A), pp. 4-13, *infra*. To be sure, § 403 was framed before Title I was added to the LMRDA. But there is not one iota of evidence in the language or history of Title I to suggest that Congress intended, in that Title, to authorize a second

and distinct remedy for setting aside union elections. Thus, § 403 is properly read to apply to Title I suits to the same extent as to state-law actions, and to preclude any suit which, like the instant one, seeks to set aside a union election. Part I(B), pp. 13-16, *infra*.

II. Even if the courts below were not statutorily precluded from preventing the counting of the ballots cast in a union election, setting aside the election, and directing a new election at a later date, traditional equitable principles, which are applicable in Title I actions, counsel strongly against the exercise of such authority.

Equity has long been virtually unwilling to enjoin elections, be they public elections or union elections; nothing in Title I's language or legislative history suggests that Congress intended the courts to depart from this long-standing reluctance. Furthermore, enjoining an election injects the court into the midst of a political thicket; were equitable relief against union elections available, federal injunctions would become an important weapon in the campaign arsenal of candidates for union office. And finally, in light of the availability of the post-election remedy under Title IV of the LMRDA, an injunction against an election is not necessary to prevent irreparable harm. Part II, pp. 11-21, *infra*.

ARGUMENT

I. TITLE I OF THE LMRDA MAY NOT BE USED TO BYPASS THE EXCLUSIVE PROCEDURE FOR SETTING ASIDE A UNION ELECTION ESTABLISHED IN TITLE IV OF THAT ACT.

The court below affirmed an injunction the effect of which, in that court's own words, was to "*set aside the earlier nomination and election*" that the petitioner union had held and to "order a new election and the procedures therefor." 679 F.2d at 983-84 (emphasis added). The threshold question here is whether Congress, in enacting Title IV of the LMRDA—the title addressed specifically to union elections—precluded private actions for such relief.

As we proceed to show, the legislative materials compel an affirmative answer to that question. Section 403 (LMRDA § 403, 29 U.S.C. § 483) was included by the Senate Labor Committee in Title IV of the Act to assure that *only* the Secretary of Labor could sue to set aside a union election. That section's point was to preclude *all* remedies existing at the time for overturning union elections (Part A). And, when Title I was added to the LMRDA on the floor of the Senate, Congress did not upset the preclusion rule already stated in § 403 (Part B). Thus, Title I suits as well as state-law suits are precluded to the extent they seek the relief that Title IV empowers the Secretary alone to seek.[1]

A. Title IV of the LMRDA, entitled "Elections," "establishes a set of substantive rules governing union

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[1] We assume for present purposes that the district court correctly found violations of Title I here. Thus, we have no occasion to discuss the interplay between Title I's substantive rules and those stated in Title IV. That question, which has engendered substantial debate in the wake of *Calhoon v. Harvey*, 379 U.S. 134 (1964), is not presented in this case.

elections." *Trbovich v. Mine Workers*, 404 U.S. 528, 531 (1972) (citations omitted). In addition, and of particular relevance here, Title IV "provides a comprehensive procedure for enforcing those rules." *Id.* In broad outline, that procedure is a suit by the Secretary of Labor "to set aside [an] invalid election . . . and to direct the conduct of an election . . . under the supervision of the Secretary" (LMRDA § 402(b), 29 U.S.C. § 482(b)).

The Senate Labor Committee version of what was to become the LMRDA included Title IV and did not include a "Bill of Rights" Title; the latter was added (as Title I) by amendment on the floor of the Senate. But from the outset Congress was aware that state law provided remedies for challenging election-related conduct. In the context of the Title IV debates, therefore, Congress considered the extent to which the Secretary's authority established in that Title should be exclusive. Section 403 states the legislative judgment:

> Existing rights and remedies to enforce the constitution and bylaws of a labor organization with respect to elections prior to the conduct thereof shall not be affected by the provisions of this [title]. *The remedy provided by this [title] for challenging an election already conducted shall be exclusive.*

The court below, although stating that it was "argu[able] that § 483 does not impinge upon Title I at all," 679 F.2d at 985, assumed for purposes of its decision that § 403 applies to Title I suits to the same extent that the section applies to state-law suits. (We show *infra* at 13-16 that that assumption is required by the legislative history of Title I.) The court concluded, however, that § 403 was not intended to preclude *any* suits—state or federal—until "all the ballots are counted," 679 F.2d at 993, reasoning that until such time "an election is not 'already conducted' " within the meaning of § 403, *id.* Because the district court had issued a temporary restraining order against tabulating the ballots—an order which was issued for the sole purpose of "preserv[ing] . . . the court's

jurisdiction," 521 F. Supp. at 618, as against the Secretary of Labor [2]—the court of appeals concluded that the district court was entitled, *seven months later*, to grant what the district court termed "preliminary relief ordering that a new nominations meeting and election be held," 521 F. Supp. at 627. As we proceed to show, this construction of § 403 cannot be squared with either the language or the policies of that provision.

1. At the threshold, the court below erred in wrenching the words "already conducted" from their statutory context. Section 403 does *not* distinguish between suits brought before and suits brought aften an election has been conducted; rather, the section distinguishes between suits brought to "challeng[e] an election already conducted" and all other suits. The focus of the statutory language, then is on the suit's *purpose* and *not* on the suit's *timing*.[3]

Once this is understood, it becomes clear how unlikely the decision below is even as a construction of the bare words of § 403. The relief sought and obtained here, after all, was to "set aside" the election and to direct a "new election." It is all but impossible to understand how one can "set aside" an election that has not been con-

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[2] The district court stated that it also was acting "to avoid irreparable harm to the plaintiffs." 521 F. Supp. at 618. But it is difficult to imagine how plaintiffs could have been harmed by the mere tabulating of the ballots—except insofar as the tabulation, in the district court's view, would have required that jurisdiction be ceded to the Secretary of Labor.

[3] Thus, for example, a suit brought after all ballots have been tabulated and the result announced is *not* precluded by Title IV if the suit is one for damages on account of election-related misdeeds or is one to restrain misconduct from recurring in the future. *E.g.*, *Ross v. Electrical Workers*, 513 F.2d 840 (9th Cir. 1975); *Amalgamated Clothing Workers Rank and File Committee v. Amalgamated Clothing Workers*, 473 F.2d 1303 (3d Cir. 1973).

ducted or order a "new election" if there has not already *been* an election. Thus, the fact that the election had proceeded to the point where it was necessary to "set it aside" demonstrates that at least for the purposes of this suit the election had been "already conducted" within the meaning of this statutory phrase.

2. This Court has, moreover, repeatedly cautioned that in interpreting the LMRDA, "[w]e must look to the objectives Congress sought to achieve, and avoid 'placing great emphasis upon close construction of the words.'" *Steelworkers v. Sadlowski*, —— U.S. ——, 102 S.Ct. 2339, 2345 (1982).[4] And when that inquiry is undertaken it is clear that the "objective Congress sought to achieve" in § 403 was to differentiate between suits seeking to set aside a union election—suits that have a particularly disruptive effect—and other types of suits, including even post-election damage suits. Section 403 was intended to preclude the former type of private actions (whether brought before or after the last ballot is counted) but not the latter.

(a) The decision below holding that the preclusive effect of § 403 depends on the suits' timing and not on the nature of the relief being sought attributes to Congress an idiosyncratic and implausible intent. It is common ground here that Congress, at the least, intended to give the Secretary exclusive authority to sue to set aside an election after the last ballot is counted. Yet the court below has offered no sensible explanation as to why Congress, having made that decision, would have placed dispositive importance on the timing of a suit seeking such relief and would have intended to permit suits seeking to set aside an election so long as the order issues before the last ballot is counted.[5]

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[4] *See also Hall v. Cole*, 412 U.S. 1, 11 & n.17 (1973); *Wirtz v. Bottle Blowers Ass'n*, 389 U.S. 463, 468 & n.6 (1968).

[5] The court of appeals reasoned that defining "already conducted" to mean "when all the ballots are counted" is desirable because

(b) The legislative statements as to the import of § 403 make clear that the court below misconceived Congress' intent. The Senate Labor Committee in its report accompanying the bill explained the section as follows: "[S]ince the bill provides an effective and expeditious remedy for overthrowing an improperly held election and holding a new election, the Federal remedy is made the sole remedy and private litigation would be precluded." [6] This explanation is particularly significant since § 403 was enacted verbatim as reported by the Committee. Similarly, at the end of the Senate consideration of the bill, Senator Goldwater submitted an analysis of the bill which stated: "the remedy provided by this title IV for challenging an election shall be exclusive, that is, shall preempt all other provisions of law." [7] No one even hinted at the dichotomy drawn by the court below be-

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that construction would permit Title I claims for "relief for violations that occur during the election, such as denial of access to the polling place or failure to provide a minority with ballots," 679 F.2d at 993. That court added that "[p]reresult judicial relief need not require a new election in all cases" and may, indeed, be "less disruptive than a new election," *id.* But this analysis simply perpetuates the basic flaw of the decision below by focusing exclusively on the timing of the suit and ignoring the substance of the relief being sought in determining whether the suit is precluded by § 403. A suit brought during the balloting to obtain, *e.g.*, "access to the polling place" is not a suit to "challeng[e] an election." But a suit filed during the balloting seeking to set aside the election and direct a new election is a suit to challenge an election and hence is precluded by § 403. *See also* Judge Campbell's dissenting opinion below, 679 F.2d at 1005; Comment, *Titles I & IV of the LMRDA: A Resolution of the Conflict of Remedies*, 42 U. Chi. L. Rev. 166 (1974); Note, *Pre-Election Remedies Under the Landrum-Griffin Act*, 74 Colum. L. Rev. 1105, 1123-24 (1974).

[6] S. Rep. No. 187, 86th Cong. 1st Sess., *reprinted in* I NLRB, Leg. Hist. of the LMRDA 417 [hereinafter cited as "Leg. Hist."].

[7] U.S. Department of Labor, *Legislative History of the LMRDA* at 839.

tween pre- and post-tabulation suits seeking to set aside an election.

(c) Finally, the construction of § 403 adopted below negates several judgments Congress made in enacting Title IV.

Title IV was carefully crafted by the Senate over a two-year period. A predecessor of Title IV had been contained in the Kennedy-Ives bill [8] which the Senate Labor Committee, after extensive hearings,[9] had reported to the Senate in 1958. That bill was amended and approved by the Senate [10] after a week-long debate, but was never taken up by the House.[11] In 1959, the Senate Labor Commitee, after holding additional hearings,[12] reported a new bill to the Senate,[13] with an election title largely following the Kennedy-Ives bill that the Senate had passed the previous year; [14] that title with only minor changes was enacted into law as Title IV. *See generally Trbovich v. Mine Workers, supra*, 404 U.S. at 533.

In framing Title IV Congress made the fundamental decision that only the Secretary of Labor would be em-

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[8] S. 3974, 85th Cong. 2d Sess. (1958).

[9] Sen. Comm. on Labor and Public Welfare, Subcommittee on Labor, Hearings on Union Financial and Administrative Practices and Procedures, 85th Cong. 2d Sess. (1958).

[10] 104 Cong. Rec. 11486-87.

[11] The Senate bill was not acted on by the House Education and Labor Committee. An extraordinary motion on the floor of the House to suspend its rules and pass the bill as approved by the Senate without committee action failed. *Id.* at 18287-88.

[12] Sen. Comm. on Labor and Public Welfare, Subcommittee on Labor, Hearings on Labor Management Reform Legislation, 86th Cong. 1st Sess. (1959).

[13] S. 1555, 86th Cong. 1st Sess. (1959).

[14] *See* Cox, *Internal Affairs of Labor Unions Under the Labor Relations Act of 1959*, 58 Mich. L. Rev. 819, 822 (1960).

powered to sue to set aside a union election, rejecting a bill supported by the Eisenhower administration that would have authorized private suits as well.[15] As this Court explained in *Trbovich v. Mine Workers, supra*:

> A review of the legislative history shows that Congress made suit by the Secretary the exclusive post-election remedy for two principal reasons: (1) to protect unions from frivolous litigation and unnecessary judicial interference with their elections; and (2) to centralize in a single proceeding such litigation as might be warranted with respect to a single election.
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> Congress intended to prevent members from pressing claims not thought meritorious by the Secretary and from litigating in forums or at times different from those chosen by the Secretary. [404 U.S. at 532, 536]

In addition, in framing the § 402 remedy, Congress made two other subsidiary judgments of relevance here. First, in § 402(a) Congress resolved as follows the question of who should govern a union during the pendency of a challenge to the union's election:

> The challenged election shall be presumed valid pending a final decision thereon . . . *and in the interim the affairs of the organization shall be conducted by the officers elected* or in such other manner as its constitution and bylaws may provide.[16]

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[15] S. 748, 86th Cong. 1st Sess., in I Leg. Hist. 84. The pertinent legislative history is summarized in *Trbovich v. Mine Workers, supra*, 404 U.S. at 533-36.

[16] The Senate Committee explained:

> Since union business must not be brought to a standstill whenever an election is challenged, it is necessary to make some provision for the conduct of business while the proceeding is in progress . . . The choice lay between keeping the old officers in office or allowing the new officers to enter upon their duties

Second, in § 402(c) Congress specified the remedy to be afforded upon proof that a violation of Title IV "may have affected the outcome of an election" by providing:

> the court shall declare the election . . . to be void and direct the conduct of a new election *under supervision of the Secretary* and, so far as lawful and practicable, in conformity with the constitution and bylaws of the labor organization.

As this Court has explained, "Congress chose the alternative of a supervised election as the remedy for a [Title IV] violation in the belief that the protective presence of a neutral Secretary of Labor would best prevent the unfairness in the first election from infecting, directly or indirectly, the remedial election." *Wirtz v. Bottle Blowers Ass'n*, *supra*, 389 U.S. at 474.

The decision below, in permitting courts to entertain private suits to set aside union elections so long as the last ballot in the election has not been counted, runs directly contrary to each of these congressional judgments.

First and most obviously, the decision below denies unions the special protections Congress sought to provide with respect to suits challenging a union election. Under that decision, union members are able to bypass "the screening function assigned by statute to the Secretary," *Trbovich*, *supra*, 404 U.S. at 537, so long as they commence their action to set aside a union election before the last ballot is counted. And under the decision below, until the last ballot is counted, a union may be subjected to multiple suits challenging its election in forums and at times different from those chosen by the Secretary.

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even though their right may still be challenged. *The latter course seems preferable.* . . . There would be the least disruption of normal procedure within the union if they [the newly-elected officers] were continued in office. However, the ultimate decisions upon this point should be made by the labor unions themselves. [I Leg. Hist. at 418]

Second, by holding that in a private suit jurisdiction to set aside an election exists until the last ballot is counted, the decision below effectively requires a district court in an action of this type to do what the district court did here: enjoin the tabulation of the ballots and thereby leave the incumbent officers in office *pendente lite*—in this case for one full year. This result runs directly contrary to Congress' decision that, *pendente lite*, "the affairs of the organization shall be conducted by the officers elected" (*see* p. 10 *supra*).

Third, by holding that in a private lawsuit a court is authorized to order a new election, the decision below necessarily approves a remedy for an election violation other than the one Congress chose. In a private lawsuit, the Secretary of Labor is not available to supervise the rerun election; rather, as occurred here, the district court must attempt that task itself, without the benefit of the Secretary's expertise.[17] This flies in the face of Congress' judgment that where a rerun elections is necessary the "only assurance that new officers do in fact hold office by reason of a truly fair and democratic vote is to do what the Act requires, rerun the election under the Secretary's supervision." *Wirtz v. Bottle Blowers Ass'n*, *supra*, 389 U.S. at 475.[18]

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[17] The district court's order here appointed the Honest Ballot Association and Lawrence Katz, Esq., as election supervisors and required the union to bear their costs.

The district court also included in its order various rules and regulations to govern the rerun election. In so doing, the district court discarded yet another judgment Congress made in enacting Title IV: rerun elections are to be held "so far as lawful and practicable, in conformity with the constitution and bylaws of the labor organization." LMRDA § 402(c), 29 U.S.C. § 482(c).

[18] *See also* Judge Campbell's dissenting opinion: "[I]t makes little sense for there to be two potential rerun formats, the choice to depend on the fortuity whether the first election is invalidated before or after its completion." 679 F.2d at 1005.

For all these reasons, the conclusion is inescapable that in enacting § 403 Congress intended to protect the exclusivity of the procedure fashioned in the LMRDA for setting aside a union election and thus, as this Court stated without qualification in *Trbovich*, to "prohibit[] union members from initiating a private suit to set aside an election." 404 U.S. at 531. The line the court below drew between pre-tabulation and post-tabulation suits is not the line Congress established in § 403. Thus, unless Congress, in enacting Title I of the LMRDA, intended to adopt a special rule of preclusion for suits under that Title, the decision below must be reversed.

B. Title I of the LMRDA establishes a "Bill of Rights of Members of Labor Organizations." That title was "designed to promote the 'full and active participation by the rank and file in the affairs of the union,'" *Hall v. Cole*, 412 U.S. 1, 7 (1973), including, but not limited to, the union's electoral affairs. To the extent Title I's "[e]qual rights" and "[f]reedom of speech and assembly" provisions (LMRDA § 101(a)(1), (2), 29 U.S.C. § 411(a)(1), (2)) apply to union elections, those provisions overlap with the provision of Title IV which secures to union members the right to nominate, support and vote for candidates of their choice (LMRDA § 401(e), 29 U.S.C. § 481(e)). *See* n.1, p. 4 *supra*.

Section 102 of Title I, 29 U.S.C. § 412, provides for private enforcement of that Title, authorizing private suits for "such relief (including injunctions) as may be appropriate." There is nothing in the language of § 102 to suggest that Congress intended a different preclusion rule to apply to actions to set aside a union election under that section than apply to all other actions seeking such relief. Nor is there anything in logic to suggest that Congress, having created in Title IV the procedure deemed appropriate for suits to set aside elections, would have decided to authorize an entirely different proce-

dure with a different remedy in Title I. And the legislative history of Title I makes clear that Congress cannot be assumed to have so decided *sub silentio*.

As previously noted, Title I was added to the LMRDA by virtue of an amendment introduced on the floor of the Senate. As originally framed by Senator McClellan, the author of the amendment, Title I actions were to be enforced by the Secretary of Labor, *see* II Leg. Hist. 1102. Thus no issue as to the preclusive effect of § 403 on Title I actions could have arisen under the McClellan amendment.

The McClellan amendment passed the Senate by a one-vote margin. *Id.* 1119. Two days later, however—shortly before the entire bill was approved by the Senate—the Senate adopted as a substitute for the McClellan amendment an amendment introduced by Senator Kuchel. *Id.* 1239. It was the Kuchel amendment that provided for private enforcement of Title I.

It is not entirely clear why the Kuchel amendment changed Title I's mode of enforcement. Senator Clark, a cosponsor of the amendment, stated that the sponsors' intent was to "take[] the Federal bureaucracy out of this bill of rights," *id.* 1233. This same philosophy was expressed by Senator Kefauver who "congratulate[d] the sponsors" for altering the McClellan amendment as that amendment "would [have] put the Secretary of Labor in the middle of the actions of every labor union in the United States and give[n] him the right to institute suits at his will," *id.* at 1238. But Professor Cox, who was an advisor to Senator Kennedy (the floor manager of the entire bill) during the Senate debates, has offered a somewhat different report on what transpired between the passage of the McClellan and Kuchel amendments:

> [S]trong sentiment for modification [of the McClellan amendment] immediately sprang up not only among its opponents but also in the ranks of South-

> ern supporters who came to realize that the authorization of governmental suits for injunction to enforce private rights would be an embarrassing precedent in future debates over civil rights legislation.[19]

This explanation is buttressed by statements made during the Senate debates by Senator Goldwater, an opponent of the Kuchel Amendment, indicating a willingness to "see stricken from the McClellan amendment those provisions of which our southern friends were fearful." II Leg. Hist. at 1238. And indeed, as Professor Aaron has noted, "[i]t is significant that all southern senators, including McClellan, voted for the Kuchel amendment." [20]

Regardless of whether the Kuchel amendment's change in Title I's enforcement mechanism was primarily a reflection of concern over undue governmental intrusion into union affairs or a concern over the precedent being set for civil rights matters, at least this much is clear: the Kuchel amendment was not intended to undo the preclusion rule of § 403 or to create a new means for overturning union elections. Indeed, there is not one iota of evidence suggesting such an intent on the Senate's part in adopting the amendment.

Nor can such an intent be attributed to the House of Representatives. The Kuchel amendment's enforcement provisions were adopted, in substance, in the three separate bills that were submitted to the House for consideration: the Elliott bill, *see* I Leg. Hist. 687; the Shelley bill, *see, id.* 865; and the Landrum-Griffin bill, *see id.* at 619. Because of the consensus on this point, the House did not focus on the enforcement issue in general or on the relationship between the Title I and

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[19] Cox, *supra*, n. 14, at 832-33. During the course of the debate on the McClellan amendment, opponents had raised this very point in an attempt to sway southern senators to oppose the amendment. *See* II Leg. Hist. at 1110-13; *see also id.* at 1123 (Sen. Johnson).

[20] Aaron, *The Labor-Management Reporting and Disclosure Act of 1959*, 73 Harv. L. Rev. 851, 859 (1960).

Title IV enforcement schemes in particular. The House debate thus adds nothing to understanding Congress' intent.

There is, then, no basis for concluding that Congress intended in Title I to undo what had been done in Title IV and to create an alternative means for setting aside an election, one in which the Secretary of Labor would not play a role in screening complaints or in supervising the rerun election. Thus, § 403 precludes Title I suits seeking to set aside union elections just as § 403 precludes state-law suits seeking that relief. Accordingly, the district court lacked the authority to grant the relief that was granted here.

II. EVEN IF TITLE IV DOES NOT PRECLUDE A COURT IN A PRIVATE ACTION UNDER TITLE I FROM ISSUING AN ORDER SUCH AS THE ONE ISSUED HERE, TRADITIONAL EQUITABLE PRINCIPLES DICTATE AGAINST THE EXERCISE OF SUCH AUTHORITY.

If the Court were to conclude, contrary to our showing in Part I, that Title IV does not preclude a court in a private action under Title I from enjoining the counting of the ballots cast in a union election, setting aside the election and directing a new election at a later date, the Court would then be faced with the question whether the district court appropriately exercised that equitable authority in this case. As we now show, that question must be answered in the negative, for traditional equitable principles which are applicable in § 102 suits counsel strongly against the exercise of that authority.

Just last Term, in *Weinberger v. Romero-Barcelo*, —— U.S. ——, 102 S.Ct. 1798 (1982), this Court had occasion to review the principles that determine whether "the extraordinary remedy of injunction" should issue. *Id.* at 1803. The Court there emphasized that an injunction " 'is not a remedy which issues as of course' "; "[t]he grant of jurisdiction to insure compliance with

a statute hardly suggests an absolute duty to do so under any and all circumstances, and a federal judge sitting as chancellor is not mechanically obligated to grant an injunction for every violation of law." *Id.* at 1802, 1803. Rather,

> An injunction should issue only where the intervention of a court of equity "is essential in order effectually to protect property rights against injuries otherwise irremediable." The Court has repeatedly held that the basis for injunctive relief in the federal courts has always been irreparable injury and the inadequacy of legal remedies.
>
> Where plaintiff and defendant present competing claims of injury, the traditional function of equity has been to arrive at a "nice adjustment and reconciliation" between the competing claims. In such cases, the court "balances the conveniences of the parties and possible injuries to them according as they may be affected by the granting or withholding of the injunction." [*Id.* at 1803; citations omitted]

These principles, the *Weinberger* Court noted, "'reflect a practice with a background of several hundred years of history,' a practice of which Congress is assuredly well aware." *Id.* Thus, although "Congress may intervene and guide or control the exercise of the courts' discretion . . . we do not lightly assume that Congress has intended to depart from established principles," and those principles "'should not be yielded to light inferences, or doubtful construction.'" *Id.* at 1803-04.

In this case, there is nothing to suggest that in enacting § 102 Congress intended to depart from those established principles. The language of the section—authorizing courts to grant "such relief (including injunctions) as may be appropriate"—is cast in broad and general terms; "[i]f anything, § 102 contemplates that damages will be the usual, and injunctions the extraordinary form of relief," *Boilermakers v. Hardeman*, 401 U.S. 233, 240 (1971). And the legislative history contains

"numerous expressions by sponsors and other supporters of the Act indicating that § 102 was intended to afford the courts a wide latitude to grant relief according to 'the necessities of the case' and 'to give such relief as [the court] deems equitable under all the circumstances.'" *Hall v. Cole, supra*, 412 U.S. at 13. Thus, in Title I cases the courts are to adhere to the historic principles and practices of equity.

Applied to the election context, these traditional equitable principles counsel against the issuance of an injunction which sets aside a union election or which postpones the date of the election. This is true for several reasons.

First, equity has long been virtually unwilling to enjoin public elections. As stated in 4 Pomeroy, *Equity Jurisprudence*, § 1754 (4th ed.):

> An injunction will not issue, as a general rule for the purpose of restraining the holding of an election, or of directing or controlling the mode in which, or determining the rules of law in pursuance of which, an election shall be held.

Similarly, so far as we have been able to determine, injunctions against union elections prior (and subsequent) to the enactment of the LMRDA were rare occurrences.[21]

There is nothing in § 102's legislative history stating an intent to depart from this longstanding rule of equity.

Second, the reasons which have led courts of equity to be unwilling to enjoin public elections apply equally to

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[21] In *Caliendo v. McFarland*, 175 N.Y.S.2d 869 (Sup. Ct. 1958), the court enjoined a special union meeting to elect union stewards. In *Litwin v. Novak*, 9 App. Div. 2d 789, 193 N.Y.S.2d 310 (1959) and *Daley v. Stickel*, 169 App. Div. 155, 153 N.Y.S.2d 886 (1956), the courts enjoined *rerun* elections that the unions in those cases had decided to conduct, requiring the unions in those cases to adhere to the results of the original election *pendente lite*. Our research has disclosed no other pre-1959 instances of such relief.

union elections. As Chief Justice Warren stated in refusing (in his capacity as Circuit Justice) to enjoin a union election, such an injunction "would call for an extraordinary exercise of judicial power that only the most compelling considerations could warrant." *Teamsters v. Cunsningham*, 40 L.R.R.M. 265 (U.S. 1957).

Such an injunction leaves the union to be run for some period of time—in this case for a full year—by officers whose terms and democratic mandate have expired. This means that the union is run by officers with no claim to legitimacy but a court order maintaining those officers in their positions. (In contrast, during the pendency of a Title IV suit the union is run by *elected* officers—albeit officers whose legitimacy is being challenged.)

Moreover, an injunction against an election interjects the judiciary into the proverbial political thicket. The timing of an election is often a critical determinant of the outcome of the election; voter sentiment often shifts from time to time during an election campaign depending upon the campaign successes and failures of the candidates or upon external events of importance to the voters.[22] Indeed, the very fact that a candidate is successful in obtaining an injunction may in and of itself boost his campaign, enabling him to herald his success and to use the court's findings to attack those who opposed the injunction. Thus a court, by issuing an injunction that

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[22] For example, both the 1968 and 1976 presidential election campaigns saw candidates who started far behind in the polls (Hubert Humphrey and Gerald Ford) make large gains during the course of the campaign; had those elections been postponed for even a week or two, the results might have been different. *See* M. Schram, *Running for President*, 366 (1977). Similarly, in 1968 and in 1980, major events occurred shortly before the election—in 1968, President Johnson's announcement of a halt to the bombing of North Vietnam and in 1980, the apparent breakdown of negotiations to free the hostages in Iran. A postponement of the election might have dissipated the effects of those events and aided the candidates who were disadvantaged by them. *See* T. White, *The Making of the President, 1968*, at 447 (1969); J. Germond & J. Witcover, *Blue Smoke and Mirrors*, 297, 312, 319 (1981).

postpones the date of the election, is more likely than not to affect the results of the election.

Precisely because of the effect that an injunction against an election may have on the eventual outcome of that election, were such relief to be made available, federal court injunctions would become an important weapon in the campaign arsenal of every candidate for union office. A candidate who believed, pre-election, that he was trailing but that his candidacy was gaining momentum (or that his opponent's candidacy was fading) would have every incentive to seek a judicial order defering the election date. The federal courts would thus find themselves squarely in the midst of a political quagmire.

Finally and perhaps most importantly, although "the basis for injunctive relief in the federal courts has always been irreparable injury and the inadequacy of legal remedies," (p. 16, *supra*), an injunction against an election can rarely (if ever) be justified on this basis. As this Court has held, "[i]nadequacy of remedy and irreparable harm are practical terms. . . . As such, their existence today must be determined . . . in the light of the remedies now available. . . ." *Beacon Theatres v. Westover*, 359 U.S. 500, 507 (1959). And under Title IV of the LMRDA there is "now available" the congressionally-crafted post-election remedy to challenge an election that was tainted by illegalities.[23] Thus, the indispensable requisites for equitable relief—irreparable injury and inadequancy of legal remedies—ordinarily will be lacking in a suit seeking to enjoin a union election.[24]

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[23] Indeed, in this case, the district court issued a temporary restraining order not to prevent irreparable harm but to "preserve . . . its jurisdiction" and thereby *defeat* (or at least defer) the availability of the Title IV remedy (*see* pp. 5-6, *supra*).

[24] *See also Meyer v. Bottone*, 459 Pa. 217, A.2d 328, 166, 167 (1974), in which the Pennsylvania Supreme Court refused to enjoin a union election stating:

> While the state and federal courts have concurrent jurisdiction *prior* to an election, in view of the clearly adequate federal

Indeed, in *Oden v. Brittain*, 396 U.S. 1210 (1969), Justice Black, as a Circuit Justice, refused to enjoin a public election precisely because of the availability of post-election relief. Justice Black explained: "If this election were held, applicants could later bring suit to have it set aside," and thus "the election cannot result in the severe irreparable harm necessary to justify the issuance of the extraordinary remedy of an injunction by an individual Justice." *Id.* at 1211. The same is true with respect to union elections: because of the availability of the Title IV post-election remedy, a union election ordinarily "cannot result in the severe irreparable harm necessary to justify the issuance of the extraordinary remedy of an injunction" by an individual district court judge.[25]

In light of the foregoing, it is difficult for us to envision circumstances in which it would be appropriate for a court of equity to enjoin an election. But it is neither necessary nor appropriate for the Court to decide here whether a "genuinely extraordinary situation," *Sampson v. Murray*, 415 U.S. 61, 92 n.68 (1974), could arise in which such relief would be appropriate. It is enough that there is nothing about this case that is sufficient to overcome the force of the equitable constraints just discussed. Accordingly, the district court erred here in granting an injunction which prevented the counting of the ballots cast in a union election, set aside that election, and directed a new election at a later date.

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remedy *post* election our state courts, in a case such as this, should refrain from exercising their jurisdiction. [emphasis in original; citations omitted]

[25] Except where, as here, the candidate seeking to enjoin the election has been denied a place on the ballot, pre-election equitable intervention would not be justified for yet another reason: the party seeking the injunction may win the election, in which case there would be no need for judicial intervention at all.

CONCLUSION

For the foregoing reasons, the judgment of the court below should be reversed.

Respectfully submitted,

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